

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

STATE OF IOWA, STATE OF
ARKANSAS, STATE OF FLORIDA,
STATE OF IDAHO, STATE OF
KANSAS, STATE OF MISSISSIPPI,
STATE OF MISSOURI, STATE OF
MONTANA, STATE OF
NEBRASKA, STATE OF OHIO,
STATE OF OKLAHOMA, STATE
OF TEXAS, STATE OF UTAH, and
AMERICAN FREE ENTERPRISE
CHAMBER OF COMMERCE,

Petitioners,

v.

JENNIFER GRANHOLM, *in her
official capacity as Secretary of the
United States Department of Energy;*
JEFFREY MAROOTIAN, *in his
official capacity as the Principal
Deputy Assistant Secretary for
Energy Efficiency and Renewable
Energy;* UNITED STATES
DEPARTMENT OF ENERGY;
MICHAEL S. REGAN, *in his official
capacity as the Administrator of
United States Environmental
Protection Agency;* and UNITED
STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondents.

FILED

APR 05 2024

**U.S. Court of Appeals
Eighth Circuit**

No.24-1721

Docket No. EERE-2021-VT-0033

PETITION FOR REVIEW

Pursuant to 49 U.S.C. § 32909 and Federal Rule of Appellate Procedure 15(a), the States of Iowa, Arkansas, Florida, Idaho, Kansas, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, Texas, Utah, and the American Free Enterprise Chamber of Commerce (collectively, “Petitioners”) hereby petition this Court for review of the United States Department of Energy’s (“DOE’s”) final rule, *Petroleum-Equivalent Fuel Economy Calculation* published in the Federal Register at 89 Fed. Reg. 22041 (Mar. 29, 2024) (“PEF Rule”). A copy of the final rule is attached as Exhibit A.

Section 32902 of Title 49 of the U.S. Code provides that “a person that may be adversely affected by a regulation prescribed in carrying out any of sections 32901–32904 or 32908 of this title may apply for review of the regulation by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business.” 49 U.S.C. § 32909(a). Such a “petition must be filed not later than 59 days after the regulation is prescribed.” *Id.* § 32909(b).

Jurisdiction and venue are proper under 49 U.S.C. § 32909, because Petitioners are persons adversely affected by a regulation prescribed under 49 U.S.C. § 32904 and because Petitioners State of Iowa, State of Arkansas, State of Missouri, State of Nebraska, and the American Free Enterprise Chamber of Commerce, reside in this Circuit. The petition is timely filed because the regulation was prescribed no earlier than March 29, 2024, when it was published in the Federal Register. *See Nat. Res. Def. Council v. Nat'l Highway Traffic Safety Admin.*, 894 F.3d 95, 103, 106 (2d Cir. 2018).

The U.S. Environmental Protection Agency (EPA) is a proper Respondent because the PEF Rule is “intended to be used by the Environmental Protection Agency in calculating corporate average fuel economy values.” 10 C.F.R. § 474.1. EPA must use the PEF Rule to calculate fleet-average fuel economy values for automobile manufacturers. 49 U.S.C. § 32904(a)(2)(B). EPA, together with DOE, would therefore be responsible for compliance with any relief ordered by this Court.

Petitioners seek review of the PEF Rule on ground that the Rule exceeds DOE’s statutory authority and violates other federal laws:

(1) DOE lacked statutory authority to impose a fuel-content factor which multiplies the nominal fuel-efficiency of electric automobiles by 6.67.

(2) DOE lacked statutory authority to “apply[] the revised [Petroleum-Equivalency Factor] beginning with MY 2027” because DOE is “required [to perform an] annual review of the [Petroleum-Equivalency Factor].” 89 Fed. Reg. at 22054.

(3) DOE failed to perform the required Environmental Impact Statement under the National Environmental Policy Act.

(4) DOE’s final rule is arbitrary and capricious and otherwise contrary to law. 5 U.S.C. § 706.

Petitioners reserve the right to modify, add, or abandon grounds.

Petitioners respectfully request that this Court (1) grant the Petition and hold that the final rule is unlawful; (2) vacate, enjoin, and set it aside; and (3) provide such other relief as this Court deems appropriate.

Dated: April 5, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 5, 2024, the above Petition for Review was electronically filed with the United States Court of Appeals for the Eighth Circuit using the CM/ECF system.

I will also cause a copy of the date-stamped Petition to be sent via certified mail to:

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